IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 33 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIMSING KALUBHAI BARIA & 1 - Appellant(s)
Versus
DOLIBEN LALJIBHAI VANKAR - Defendant(s)

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Appearance :

NOTICE SERVED for Appellant(s) : 1 - 2.MR BH MEHTA for Appellant(s) : 1 - 2.MRS VASAVDATTA BHATT for Appellant(s) : 2,
SERVED BY AFFIX.(N) for Defendant(s) : 1,
(MR ANANT S DAVE) for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/01/2007

ORAL JUDGMENT

The original opponents have preferred this appeal. Appellant no. 1 is driver of the bus owned by appellant no. 2 – Corporation. Respondent no. 1 is the original claimant. The appeal is filed under section 110-A of the Motor

Vehicles Act, 1939 [hereinafter referred to as 'the Act']. It is to challenge the judgment and award dated 17/5/1988 made by the Motor Accident Claims Tribunal [Aux.] Panchmahals at Godhra in M.A.C. Petition No. 283 of 1984. It has been filed by mother of minor Jagruti for claiming compensation since she had received serious injuries in a vehicular accident which took place on 20/9/1983 at about 4.00 p.m. According to respondent-claimant, on that day appellant no. 1 drove bus belonging to appellant no. 2 in a rash and negligent manner. As a result of the same, it dashed against Jagruti, a minor child, aged about 8 years, which caused her serious injuries. Her mother, therefore, preferred the petition under the Act for claiming compensation initially for Rs.2 lacs but subsequently reduced to Rs.1 lac.

2. The appellants resisted the claim by filing written statement at Exh. 6. They denied that Jagruti had sustained injuries due to negligent driving of appellant no. 1. However, so far as the date of accident was concerned, they did not raise any dispute. According to them, the victim girl all of a sudden tried to cross the road and to save her, appellant no. 1 had to take abrupt turn and in the process the girl dashed against the rear wheel of the bus and she sustained injuries.

2.1. Before the Tribunal, the parties led evidence, oral as well as documentary and on the basis of the same, the Tribunal decided the issue of

negligence alleged against appellant no. 1 proved and held him responsible for causing the accident. So far as the issue of quantum is concerned, the Tribunal adequately considered the medical evidence and other relevant factors and assessed the compensation at Rs.68,521/-. Hence the present appeal.

3. Mrs. Vasavdatta Bhatt, learned advocate appearing for the appellants has submitted that there is no cogent and reliable evidence to hold that appellant no. 1 was driving the vehicle in negligent and rash manner and thereby he caused injuries to minor Jagruti. According to her, she sustained injuries solely due to her own fault. She has further submitted that the compensation assessed by the Claims Tribunal is on a higher side and it is required to be reduced.

4. I have carefully considered the submissions made by Mrs. Bhatt. I have also closely perused record and proceedings of the case. There is no dispute that the victim girl at the time of accident was aged about 8 years. From the contents of the written statement, it is obvious that even the appellants have not denied the collision between the victim and the bus. The only dispute that has been raised by the appellants is that the girl had sustained injuries due to her own negligence because she all of a sudden tried to cross the road and she dashed against the rear wheel of the bus. It is well settled proposition of law that no negligence can be attributed to a child. There is, therefore, no question

of any negligence or even contributory negligence on the part of victim. The material on record further shows that due to the impact, the child was thrown to a distance of about 4 to 5 ft. Therefore, there is no doubt in my mind that she was given a violent push by the vehicle and that could happen only if she had come in contact with the front portion of the bus. So far as appellant no. 1 is concerned, he is not at all sure against which portion of the bus the girl had dashed. In these circumstances, it is difficult to understand how negligence can be attributed to the girl. It is the duty of the driver when he is proceeding on a main road, to be prepared for such eventualities and to be vigilant that in the event of such happening, namely crossing of road by child or any pedestrian, the accident could be averted. This ordinary care has not been exercised by appellant no. 1. Hence, in my opinion, the finding given by the Claims Tribunal regarding negligence of appellant no. 1 cannot be termed as erroneous and it is required to be confirmed. On this count Mrs. Bhatt's submission is not accepted.

4.1. Her second submission is with regard to quantum of compensation. The Claims Tribunal, as stated above, after careful consideration of the medical evidence, has awarded Rs.60,000/- under the head of pain, shock and suffering. The record shows and in particular the medical evidence that due to the accident the victim had sustained serious injuries and in particular to her private part. She was immediately admitted in the hospital initially in

Baroda Hospital and thereafter in Narhari Hospital at Baroda and subsequently in the hospital of Neurologist. She was given extensive medical treatment and she was also operated upon. She was treated as indoor patient in Narhari Hospital for about a month or so, where the operation was performed and thereafter, it was advised that after reaching age of 16, she should be brought again for the plastic surgery. It also appears that she was taken to Neurologist Hospital and she was advised a pipe to be inserted for the smooth flow of urine. This had to be on permanent basis. She was also admitted in Nadiad Hospital as she discharged blood and pus from urine. On 21/3/1988 the girl was examined by Dr. Anilbhai A Patel and he found the following complaints :-

(1) Dribbling of urine [ile drop by drop] urine comes out without control from the supropubic fistula for last 4 years.

(2) Dribbling of urine from the vagine for last 4 years.

(3) No control over urination.

(4) On and off swelling and severe pain over the site of supropubic fistula. [whole in the abdomen], which connects the skin to the urinal bladder.

(5) Old fracture of the palvis.

(6) Growth of the girl is hamperred,

and he gave the following findings :-

(1)Urethovaginal fistula

(2) Complete discontinousty of the distal urshra

(3) Supropubic fistula was explored.

(4) Dilation was done, Pus came out.

It also appears that he had advised that after reaching age of 17 to 18 years child Jagruti should have plastic surgery done. Doctor has assessed the disability at 100%, but he nevertheless qualified the statement by stating that there were no norms fixed for determining such disability. However, it appears from the evidence that if the adequate treatment was given, she would not find it difficult to have sexual intercourse and enjoy marital life. The Tribunal, after referring to several decisions which have been adequately discussed in the judgment, assessed the compensation under the head of pain, shock and suffering at s.60,000/- and in my opinion, by no stretch of imagination it can be said to be excessive. Further for medical expenses and other sundry expenses, small amounts have been awarded, details whereof are stated in para. 13. The total amount under different heads other than pain, shock and suffering, comes to Rs.8,521/-. In-all the Claims Tribunal has awarded Rs.68,521/-, which is just compensation and cannot be said to be on higher side at all. This appeal has, therefore, no merits and it is dismissed.

[Akshay H Mehta, J.]

* Pansala.